

In re Application of Bryant

Serial No. 10/786,903

Filed: February 25, 2004

For: WRIST AND FOREARM SUPPORT FOR STEADYING AN AIM

**AMENDMENT ACCOMPANYING RCE**

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**REMARKS**

**Introduction**

This is an Amendment that accompanies the filing of a Request for Continued Examination. By this Amendment, applicant has done the following:

- cancelled claims 17-24
- added new claims 25-42

Since claims 1-7 and 9-16 were already cancelled, the application now presents claims 8 and 25-42. Applicant submits that this response addresses all of the issues raised in, and is thus fully responsive to, the pending FINAL Office Action of November 18, 2005. Applicant respectfully requests that this Response be entered in this application.

**Double Patenting Rejection**

Since this is a provisional rejection, applicant will await making a response thereto. However, applicant intends to abandon the parent patent application in favor of this CIP patent application.

**Rejection of Claims 8, 17 and 24 under 35 USC 102**

The Primary Examiner has rejected claims 8, 17 and 24 under 35 USC §102(b) as "being anticipated" by U.S. Patent No. 5,385,536 to Burkhead et al. Applicant has cancelled claims 17 and 24 so that the rejection thereof is moot.

With regard to claim 8, applicant respectfully submits that the claims are patentably distinct over the '536 Patent for the reasons set forth below.

The invention as claimed per this response essentially requires that the pad or brace be adapted to be moved into abutment with the user/hunter in such a fashion that when the pad is in abutment with the user, the support is movable relative to the torso of

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the user. This limitation is proper and is one that the Examiner must consider the patentability analysis.

In the past, claims have been allowed that recite the user in the body of the claim. For example, U.S. Patent No. 6,637,708 B1 to Peterson<sup>1</sup> presents claim 1 wherein there is the recitation that, "... a shooter being thereby unencumbered by any portion os [*sic*: of] said apparatus while entering, exiting or positioning upon the shooting platform." While the above-quoted recitation and the recitations of the instant claims are different, the fact that the '708 Patent contains such a recitation is supportive of applicant's position that the recitation directed to the interaction between the pad/brace and the user/hunter must be considered in the patentability analysis.

Referring to the '536 Patent, the '536 Patent pertains to an orthopedic device that intended to maintain the arm and shoulder immobile. In this regard, the Examiner is referred to the description of the Field of the Invention found at Column 1, lines 6-9, which reads:

The invention is generally related to orthopedic devices for immobilizing and supporting limbs of patients who are undergoing surgical or other medical treatment of their limbs or who have suffered injury to their limbs.

The entire '536 Patent focuses on providing an orthopedic device that has a goal to immobilize the patient's arm and shoulder. This is especially clear from the drawings of FIGS. 1 and 2 that show that the upper arm and the forearm of the patient are secured to the orthopedic brace and the orthopedic brace is secured to the adjustable mounting assembly 34. When the arm support 14 and the positioning assembly 16 and the adjustable mounting assembly 34 are secured into their final positions, the arm and the

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<sup>1</sup> A copy of the Peterson patent was included with the response after final so that a copy will not be included with this response.

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shoulder are rendered immobile so that they cannot be moved relative to the trunk of the patient. Hence, the '536 Patent cannot address the present invention wherein the pad or brace is adapted to be moved into abutment with the user or hunter in such a fashion so that the support can be moved relative to the torso of the user or hunter.

Applicant respectfully submits that claim 8 is patentably distinct over the '536 Patent, and requests the removal of this rejection.

**New Claims 25 through 42**

Applicant has added new claims 25 through 42. These new claims are along the lines of claims 1 through 19 in the parent patent application, which applicant intends to abandon in favor of this CIP patent application. The basis for the allowance of these new claims tracks the argument set forth above in that the claims essentially require that the pad or brace be adapted to be moved into abutment with the user in such a fashion that when the pad is in abutment with the user, the support is movable relative to the torso of the user. Applicant respectfully submits that this distinction is a valid basis to define over the applied reference.

**Confirmation of the RCE and Extension Fee Paid**

When this patent application was filed on February 25, 2004, applicant was entitled to small entity status. On October 6, 2004, applicant filed a Notification of Loss of Entitlement of Small Entity Status. Even though applicant has lost his small entity fee status, it appears that he is still entitled to pay the small entity status per Manual of Patent Examining Procedure (MPEP 509.03 VII page 500-50), which provides that an applicant's fee status will not change through the prosecution. If this is not the case, the RCE includes permission to charge additional fees to Deposit Account No. 02-2267.

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**Conclusion**

Applicant submits that the claims are in form for allowance. If the Examiner has any questions, applicant urges that the Examiner telephone the undersigned attorney.

Respectfully submitted,

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Date: March 20, 2006